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July 1, 1996

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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Comments of California Payphone Association in CC Docket 96-128

DOCKET FILE COPY ORIGINAL

Dear Sir or Madam::

In accordance with the Commission's Rules of Practice and Procedure (47 CFR Part 1, Subpart A) and the procedures specified in the Notice of Proposed Rulemaking issued June 4, 1996 in the above docket, enclosed please find an original and 14 copies of the Comments of California Payphone Association, submitted this day for filing with the Commission.

Two copies of the comments and an electronic version on disk are being provided the Common Carrier Bureau, Enforcement Division, this date.

Also, an extra copy of the comments is enclosed for returning a file-stamped copy to our office in the envelope provided.

Very truly yours,

Martin A. Mattes
of
GRAHAM & JAMES LLP

MAM:jw
Enclosures
cc: Common Carrier Bureau (w/ encs.)
ITS, Inc. (w/ enc.)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
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Implementation of the)
Pay Telephone Reclassification
and Compensation Provisions of the
Telecommunications Act of 1996

Original

COMMENTS OF CALIFORNIA PUBLIC UTILITIES COMM... ON NOTICE OF PROPOSED RULEMAKING

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PAYPHONE ASSOCIATION

July 1, 1996

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS OF CALIFORNIA PUBLIC UTILITIES COMMISSION ON NOTICE OF PROPOSED RULEMAKING

In accordance with the Commission's General Rules of Practice and Procedure, 47 CFR Section 1.1, et seq., and the specific procedures set forth in the Commission's Notice of Proposed Rulemaking ("NPRM"), released June 6, 1996, in the above-captioned proceeding, California Payphone Association ("CPA") respectfully submits its comments in response to issues presented by the NPRM.

I.

DESCRIPTION OF CALIFORNIA PAYPHONE ASSOCIATION AND ITS PARTICIPATION IN THIS PROCEEDING

CPA is a regular participant, as the principal representative of independent payphone providers ("IPPs"), in telecommunications regulatory proceedings before the California Public Utilities Commission ("CPUC"), performing before the CPUC a role comparable to that typically assumed by the American Public Communications Council ("APCC") in matters before the FCC. CPA is generally familiar with and fully supports the positions being advanced by APCC in the present proceeding. CPA adds its own voice to this proceeding neither to duplicate nor to differ with the positions taken by APCC, but rather to offer its own perspective based on the particular experiences of IPPs operating in the State of California and to recount facts from those experiences that may usefully inform the record in this proceeding.

CPA relies on APCC to address all issues presented for comment in the NPRM on which a representative of IPPs may usefully contribute. Rather than trying to cover all such issues, an effort that would tend to duplicate APCC's work, CPA's comments address only those issues as to which the development of the competitive market for payphone services in California may offer insights or evidence helpful to the Commission.

II.

RESPONSES TO SPECIFIC REQUESTS FOR COMMENTS

A. Scope of Payphone Calls Covered by This Rulemaking

At paragraph 17 of the NPRM, the Commission seeks comment on a tentative conclusion that it must at least prescribe standards for setting fair compensation for all access code calls, subscriber 800 and other toll-free number calls, and debit card calls, whether they be intrastate or interstate in destination. At paragraph 18, the Commission tentatively concludes that it should ensure compensation for international payphone-originated calls as well, and seeks comments on that conclusion.

CPA respectfully urges the Commission to confirm both these conclusions. There are two primary reasons why the Commission should prescribe compensation -- and a uniform level of compensation -- for all these classes of non-coin calls. The first is that the Telecommunications Act expressly requires the Commission to ensure fair compensation for each and every completed intrastate and interstate call, and a failure to require consistent compensation for international calls would create an unnecessary enforcement problem. The second is that a uniform national approach is necessitated by the demonstrated inability of the states to address the payphone compensation issue effectively.

1. Failing to require compensation for all calls <u>will lead to enforcement problems.</u>

The breadth of coverage the Commission has tentatively found appropriate is essential, because a narrower scope would create a serious enforcement problem. Particularly in the case of access code calls and debit card calls, there is no way for the payphone provider or the originating local exchange carrier ("LEC") to ascertain whether the destination of the call ultimately dialed will be intrastate, interstate, or international. A failure to require compensation for all three categories of payphone-originated calls would create a risk of erroneous or intentional undercounting of calls entitled to compensation, and neither the payphone provider nor the LEC would have any practical ability to monitor or correct such undercounting. The simple solution is to require uniform compensation for each and every call, regardless of its ultimate destination. That solution also is consistent with the pattern of cost incurrence for the payphone provider, because each use of the station imposes cost on the payphone provider, whatever the destination dialed.

2. A uniform national approach is required by <u>the states' inability to achieve consistent results.</u>

Experience in California illustrates how much difficulty the states have had in implementing a consistent scheme of compensation for payphone-originated non-coin calls. As long ago as 1988, the California Public Utilities Commission ("CPUC") mandated a modest interim level of compensation ($.06 per call) for intraLATA non-sent-paid calls originating from customer owned pay telephones ("COPTs") and delivered to the LEC for completion.[1/] In 1990, the CPUC approved a settlement whereby the LEC became obliged to bill, collect, and remit to the COPT provider a pay station service charge ("PSSC") of $0.25 on each such call, with Pacific Bell agreeing to pay an additional $0.10 in compensation on each such call.[2/]<u>Re Coin and Coinless Customer-owned Pay Telephone Service</u>, Decision 90-06-018,

When, in 1994, the CPUC authorized competitive intraLATA toll services, the CPUC concluded that it would be fair to require interexchange carriers ("IXCs") carrying intraLATA non-sent-paid calls from COPT or LEC payphones to bill, collect, and remit the $0.25 PSSC on each such call.[3/] AT&T, to its credit, moved promptly to implement such procedures, but, almost two years later, this conclusion of law has yet to be implemented in any practical sense by other IXCs. The CPUC and the California

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1/ <u>Re Coin and Coinless Customer-owned Pay Telephone Service</u>, Decision 88-11-051, 29 Cal. PUC 2d 549, 561-62 (1988).

2/ <u>Re Coin and Coinless Customer-owned Pay Telephone Service</u>, Decision 90-06-018, 36 Cal. PUC 2d 446, 456 (1990). The lengthy settlement agreement, adopted with modifications by the CPUC was Attachment A to the decision, but was not reprinted in the published report. CPA would be pleased to provide copies of the settlement agreement to the Commission or any interested party upon request.

3/ <u>Re Alternative Regulatory Frameworks for Local Exchange Carriers</u>, Decision 94-09-065, adopted September 15, 1994 (California Pub. Util. Comm'n), mimeo. at 181, Conclusion of Law 132, mimeo. at 325.

Supreme Court have rejected several rounds of IXC objections until, in March, 1996, MCI and Sprint finally filed tariffs for billing and collecting the PSSC. Those tariffs, however, incorporate exorbitant charges and assert intolerable needs for delay. The CPUC has yet to enforce a requirement that uncooperative IXCs collect and remit fair compensation for non-coin pay station calls.

Currently, MCI and Sprint seek further delay of CPUC action on the PSSC issue based on the pendency of this Commission rulemaking. This Commission should respond to the California experience of IXC delay, replicated as it has been in other jurisdictions, by ordering a uniform and fair level of compensation for all classes and jurisdictions of non-coin calling from payphones.

B. Entities Required to Pay Compensation; Ability of Carriers to Track Calls from Payphones

At paragraph 28 of the NPRM, the Commission seeks comment on tentative conclusions that either a "carrier-pays" or a "set use fee" system would satisfy the Act's requirements, but that the carrier-pays approach is preferable because it would involve less transaction costs. The Commission sees lesser transaction costs if the IXC can aggregate its payments to payphone providers rather than having to bill a set-use fee to "a vast number of payphone callers " The Commission also seeks data on such transaction costs, and asks whether it should adopt a single method of compensation for all dial-around calls.

It has been CPA's experience with a set-use fee authorized by the CPUC that such a mechanism is eminently manageable and need not involve undue transaction costs, at least for the larger carriers. Based on the California experience, a set-use fee can and should be implemented on a decentralized, carrier-specific basis.

While some carriers may complain of burdensome costs, others have been able to implement a set-use fee very efficiently.

1. Transaction costs required to implement a set-use fee are modest in proportion to the benefit IXCs gain from payphone access.

The California LECs have lived with billing, collecting, and remitting a set-use fee to IPPs for over six years, ever since the CPUC adopted an industry-wide settlement of payphone service issues by Decision 90-06-018, adopted in June, 1990. That set-use fee has been the PSSC, billed and collected on each intraLATA non-sent-paid call directed to the LEC from an IPP station. Since the fall of 1994, when the CPUC authorized competition for intraLATA toll service, it has been trying to extend application of the PSSC to IXCs with respect to the same category of calls. In January, 1995, AT&T began billing, collecting, and remitting the PSSC to LEC payphone providers as well as IPPs. The other IXCs, however, have thus far succeeded in avoiding that obligation.

MCI, Sprint, and smaller IXCs through the California Association of Long Distance Telephone Companies ("CALTel") opposed the mandate to bill and collect the PSSC on behalf of payphone providers. They petitioned to modify the CPUC decision that concluded they should do so, then applied for rehearing of the decision, CPUC Decision 95-06-062, denying those petitions. When those applications were denied by CPUC Decision 95-09-126, they sought judicial review, which was also denied.[4/] When the CPUC eventually ordered MCI and Sprint to file tariffs implementing the PSSC

4/ MCI Communications Corp. v. Public Utilities Comm'n (Cal. S. Ct.), writ of review denied, February 14, 1996.

(exempting the smaller IXCs),[5] MCI and CALTel again sought rehearing, while MCI and Sprint filed motions to stay the CPUC order. Meanwhile, MCI and Sprint filed tariffs grudgingly offering to bill, collect, and remit the PSSC, but only subject to exorbitant charges to support development of new billing arrangements at costs allegedly ranging from $1 to $2 million for Sprint to over $17 million for MCI.[6] Pacific Bell and CPA opposed the IXCs' various pleadings and protested their tariff filings, and the CPUC has yet to act on any of them.

This tale of obstruction may be explained in large part by the IXCs' adamant opposition to having to bill a set-use fee on behalf of LEC payphones at a time when they still contribute toward the support of those same payphones through carrier access charges. Another consideration is the risk of incurring costs to develop systems to satisfy a CPUC requirement that will not be replicated in other jurisdictions. Both these grounds for resistance will have been removed once the Commission implements a compensation plan. What we are left to confront, then, is Sprint's and MCI's claims that it will cost them millions of dollars to implement end-user billing of a PSSC on behalf of payphone providers.

These claims ring hollow in comparison to the actual experience of Pacific Bell, GTE, and AT&T in developing the means of billing, collecting, and remitting the PSSC for the benefit of IPPs and, in AT&T's case, for the benefit of the LECs as well. AT&T and Pacific Bell have made public their costs of developing these

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5/ CPUC Resolution T-15782, adopted March 13, 1996, attached hereto as Exhibit 1.

6/ It appears that MCI's extremely high implementation cost estimate stems from that carrier's insistence on continuing to provide access for a very small portion of its customer base through 950-XXXX access codes served by Feature Group A access trunks. If this is MCI's choice, it should either bear the resultant costs of implementing a set-use fee or accept an estimation of the set-use fees 950 access should generate, paying them as an increment to its set-use fee remittances to payphone providers.

capabilities. AT&T has stated that the development of this billing capacity cost AT&T less than $200,000.[7] Pacific Bell has stated that it developed the capacity to bill and collect the PSSC for about $300,000.[8]

Thus, in California, some carriers have developed the capacity to bill and collect the PSSC at modest cost and without objection; others have objected vociferously and estimated their costs as orders of magnitude greater than those of other carriers. The logical implication is that the transaction costs required to implement a set-use fee need not be prohibitive and in fact are very modest in relation to the benefits the IXCs derive from payphone access.

2. An alternate method of compensation administered by the LECs may be considered for small IXCs unable to bill, collect, and remit a set-use fee at reasonable cost.

If small IXCs are able to demonstrate, based on real industry data that is subjected to rigorous analysis by the Commission staff and interested parties, that it is economically infeasible for them to implement a set-use fee, it may be advisable to allow them an alternate method of compensation for an interim period not to exceed two years.

A revenue allocation method administered by the incumbent LECs may provide such an alternative. Pacific Bell has proposed such a method to the CPUC in the face of the continued resistance of MCI and Sprint to implementing the PSSC on a

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7/ CPUC, Commission Advisory and Compliance Division, Telecommunications Branch, "Workshop Report on Pay Station Service Charge in Response to Commission Decision 94-09-065," June 1, 1995, at 15, attached hereto as Exhibit 2.

8/ Response of Pacific Bell to Motions of MCI and Sprint for Stay of Resolution T-15782, filed April 29, 1996, in CPUC Investigation 87-11-033, at 5-6, attached hereto as Exhibit 3.

practical basis.[9] The CPUC staff has recommended such an approach as an interim solution.[10] This is not the preferred form of compensation for payphone providers, but it does provide an alternative for IXCs unwilling or unable to support the set-use fee approach, including those with very small market shares.

C. Provision for Interim Compensation

At paragraph 39 of the NPRM, the Commission seeks comment on whether payphone providers should be provided some measure of interim compensation to be paid until the effective date of the final rules to be adopted in this proceeding. In paragraph 40, the Commission presents a series of detailed questions in this regard.

CPA relies upon and supports the analysis and presentation of the APCC on the detailed issues relevant to implementing interim compensation. CPA takes this opportunity simply to confirm the accuracy of the Commission's observation, in paragraph 39 of the NPRM, that the number of dial-around calls for which payphone providers receive no compensation, including subscriber 800 and debit card calls, has grown since the Commission last addressed the need for compensation in 1991. The growth in carrier access code dialing, subscriber 800 calling, and the use of debit cards all have been very substantial, and have resulted in significant declines in the number of 0+ calls placed from pay stations and even in the number of coin sent-paid calls. As the pendency of this federal proceeding has caused a virtual suspension of

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9/ See, Response of Pacific Bell to Motions of MCI and Sprint, Note 8, supra, at 5.

10/ Workshop Report on Pay Station Service Charge, Note 7, supra, at 4.

state commission proceedings working toward comparable compensation plans,[11] the need for the Commission to put into place some form of interim compensation, effective at the earliest lawful date, has become ever more pressing.

D. Classification of LEC Payphones as CPE

At paragraph 42 of the NPRM, the Commission seeks comment on tentative conclusions that incumbent LEC payphones should be treated as unregulated, detariffed customer-premises equipment ("CPE"), and that incumbent LECs should be required to provide all payphone providers, on a nondiscriminatory tariffed basis, all the functionalities used in a LEC's delivery of payphone services. Among a number of other tentative conclusions, the Commission seeks comment, at paragraph 45, as to whether incumbent LECs should be required to offer individual central office coin transmission services to other payphone providers under a nondiscriminatory public tariff and, if so, which central office coin services should be made available. The Commission also inquires, at paragraph 47, about whether to amend the Commission's regulations to facilitate registration of both instrument implemented and central-office-implemented payphones and about setting the demarcation point for reclassified LEC payphones consistent with the minimum point of entry ("MPOE") standards for other wireline services, and inquires, at paragraph 48, about whether fraud protection and other features should be unbundled from the services to LEC payphones.

11/ Note the success of certain IXCs in stymying the CPUC's efforts to extend California's set-use fee to IXC-handled intraLATA calls, discussed above.

CPA's response to these various inquiries can be summarized as follows: Yes, all of the above. As competition is being unleashed across the range of local exchange services and traditional regulatory constraints upon the incumbent LECs are being relaxed or removed, the time has come to level the competitive playing field among providers of pay telephone services.

Since the Commission first opened the door to competitive payphone providers in 1984, new entrants to the payphone services market have lived with the unequal resources made available to them. Deprived of access to the coin control, fraud protection, and enhanced features potentially available in the LECs' central office switches, IPPs have shown great energy and ingenuity in achieving levels of service at their "smart" payphones comparable to what the LECs can offer from their central-office implemented stations. Today, however, as the Commission proceeds to require unbundling and sale for resale of incumbent LEC services to enable competitive local carriers to deploy services to end-users more swiftly and more effectively, the time has come for IPPs, who have been struggling in the trenches for over a decade of fierce competition with the LECs, to be offered the same access to the basic network functions of central-office implemented payphone service, and for the LECs and IPPs to face the same set of rules in employing those network functions.

1. Designation and registration of LEC payphones as CPE would be practical and beneficial to competition.

While regulatory changes must be accomplished, there are no major practical hurdles to the designation and registration of incumbent LEC payphones as CPE that has not already been overcome in the case of the Customer Owned Pay Telephone ("COPT") Coin Line service deployed by Pacific Bell for the use of IPPs in

California in 1992. Pacific Bell had committed to make available the "coin access line (or its equivalent) used by LEC phones" as a tariffed service for IPPs, to the extent lawful and "technically and economically feasible," as part of the settlement agreement that was adopted by the CPUC, with modifications not relevant here, in June, 1990.[12/] Once feasibility issues had been resolved, Pacific Bell remained reluctant to tariff a COPT Coin Line service because of the restriction in Part 68 of the Commission's rules against registration of central-office implemented coin station equipment.

The president of the CPUC, G. Mitchell Wilk, addressed this problem to the attention of the Commission staff. In August, 1991, Richard Firestone, then Chief of the Common Carrier Bureau responded to Commissioner Wilk, noting the pendency of a CPA petition for rulemaking to amend Part 68 to allow registration of "dumb" (central-office implemented) payphones,[13/] but observing that this "should not deter the offering of a new competitive service in California." Accordingly, Mr. Firestone stated that the Commission would treat CPA's request for relief as a request for waiver of 47 CFR Section 68.2(a)(1), which disallows registration of "dumb" sets. He further stated that "we find that it is in the public interest to grant CPA a limited waiver of Commission policy disallowing registration of "dumb" pay telephones," and invited CPA to file with the Commission a Part 68 application to register a non-instrument-implemented pay telephone for connection to a coin service line.[14/]

12/ See, Re Coin and Coinless Customer-owned Pay Telephone Service, Decision 90-06-018, App. A, Note 2, supra.

13/ The CPA petition still awaits Commission action to this day.

14/ See, letter of Richard M. Firestone, Chief, Common Carrier Bureau, to G. Mitchell Wilk, August 27, 1991, attached hereto as Exhibit 4.

Through Protel, Inc., a payphone equipment manufacturer, CPA accomplished such a Part 68 application in early 1992, which was placed on public notice in April of that year.[15] Reversing its earlier guidance, the Commission dismissed Protel's application due to the absence of rules in Part 68 for non-instrument-implemented coin phones, concluding that a formal rulemaking would be necessary to establish guidelines for approval of such applications. In lieu of such guidelines, the Commission suggested that Pacific Bell could file appropriate interconnection requirements in its exchange tariffs. Pacific Bell did so by its Advice Letter No. 16264, filed June 25, 1992, which revised its previously effective COPT Coin LIne tariff to include Bellcore technical references for interconnection of coin stations to a central-office implemented coin line.[16]

Since 1992, the Protel equipment, which was ultimately registered under Part 68 as instrument-implemented CPE, and other dual-mode pay telephone equipment has been interconnected with thousands of Pacific Bell COPT Coin Lines in accordance with the Bellcore technical specifications included in Pacific's CPUC tariff. While there has been dissatisfaction with Pacific Bell's COPT Coin Line product -- primarily due to the high tariffed rate for this flat rate access line bundled with local usage costs -- there has been no significant problem with the interconnection of station equipment with the LEC's central-office implemented coin line. Thus, there should be no practical impediment to the Commission reforming its Part 68 rules to permit the

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15/ See, Part 68 Application of Protel, Inc. for Registration of Credit Card/Coin Telephone, File No. 1179-CX-92, order released April 23, 1996, 7 FCC Rcd. 2734.

16/ A copy of Pacific Bell Advice Letter No. 16264 is attached hereto as Exhibit 5.

registration of LEC payphone equipment and other central-office implemented station equipment as CPE.

2. The demarcation point for reclassified LEC payphones should be set at the MPOE.

Once LEC payphones have been reclassified as detariffed CPE, no conceivable justification remains for retaining a different set of inside wire ownership and responsibility rules with respect to the wires serving those stations as compared with IPP payphones or other station equipment. LEC responsibility and, ultimately, LEC ownership of the coin line circuit should stop at the minimum point of entry ("MPOE") to the premises served.

What distinguishes coin line service from the service provided to IPP stations or from ordinary business service is not the characteristics of the loop facilities, but rather the functionalities residing in the LEC central office that add coin control, call rating, answer supervision, and other features to the service. None of those features depends on LEC ownership or control of the last few yards of the loop.

The LECs' continuing control over building or campus wiring serving their pay stations tends to limit the discretion of building owners to entertain and respond to competitive offers to provide payphone service on their premises. It is one vestige of the old monopoly model, one aspect of the still unlevel competitive playing field. This problem can be easily corrected, simply by bringing LEC pay stations under the otherwise universal MPOE rules governing premises wiring.

3. Incumbent LECs should be required to make available, on a nondiscriminatory, tariffed basis, all functionalities used to deliver central-office implemented payphone services.

As noted above, IPPs operating in the service area of Pacific Bell have had the choice for some four years of subscribing to a COPT Coin Line service, which offers a near equivalent to the coin line service Pacific employs to serve its own pay telephones. COPT Coin Line service is offered only on a basis that provides flat-rated local usage, so the monthly charge for the service is substantially higher than that for basic COPT service.

What would be of greater benefit to IPPs would be to have the opportunity to purchase, at cost based rates, certain key elements of the LECs' coin line services. Indeed, as competitive local carriers come on the scene, those that deploy facilities-based services will, in many cases, have difficulty extending service to pay telephone locations if they do not have the opportunity to buy piece parts of the LECs' payphone services, including loop distribution. loop feeder, local switching, central office based coin control and call rating functions, fraud protection features (originating line screening, billed number screening, 900/976 call blocking, and international 1+ call blocking), and call validation (through access to LIDB or other data bases). In addition, as the NPRM suggests. additional fraud protections are provided through use of network coin control functions and assignment of specialized telephone numbers to LEC payphones which tend to alert international operators not to complete collect or third-party billed calls.

All these features should be unbundled and made available to competitive payphone providers upon bona fide request and at cost-based rates consistent with the pricing of the LEC's own payphone-based services. The Commission should be wary of efforts by LECs to front-load all sorts of new transaction costs on the prices of unbundled features, to the point that the sum of the prices of the parts may far exceed the costs Pacific imputes to itself in pricing its own payphone services.

Some of these features, indeed, should be made available at nominal or no cost at all, such as the provision of call screening and blocking features and distinctive numbers for fraud protection.

E. <u>Transfer of Payphone Equipment to Unregulated Status</u>

At paragraph 49 of the NPRM, presuming that LEC payphones will be detariffed as CPE, the Commission seeks comment on the specific assets to be transferred to unregulated status, on the tentative conclusions that the transfer of assets should be defined in terms of CPE deregulation and that a phase-in is not necessary, and on the consistency of this approach with the Telecommunications Act's definition of "payphone service."

CPA believes that it is generally appropriate to apply the model of CPE deregulation to the transfer of assets associated with detariffing of LEC payphone equipment. Clearly, the coin line investment, up to the MPOE, should remain part of LEC's central office equipment and outside plant accounts, but such investment beyond the MPOE should be removed along with the LEC's investment in the station set and enclosure. However, net book accounting for fixed plant investments is not sufficient to reflect the full value of an LEC's payphone operations.

As the LECs' payphones become detariffed CPE, and as structural separation or at least "nonstructural safeguards" at least as stringent as those adopted in Computer Inquiry III are applied to protect against subsidization of LEC payphone service by exchange or exchange access services, it is essential that the Commission look beyond just the net book investment value of the LECs' payphone facilities. The going concern value of the LECs' payphone operations far exceeds the heavily depreciated net book value of their equipment.[17/]

At the very least, the Commission should require a detailed study of the current market value of each LEC's currently effective payphone location contracts, by which the LECs have locked up the right to serve most locations suitable for payphone operations for years into the future. The LECs have expended substantial funds to acquire those contracts, which have substantial continuing value.[18/] That value should be part of the asset base of the LECs' "nonstructurally separated" payphone operations.[19/]

Taking a rigorous approach to the valuation of the LECs' payphone operations will have a dual benefit. It will benefit the cause of fair competition among payphone service providers, because it will help to ensure that the cost structure of the payphone operations of the LECs -- still the dominant providers of such services in

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17/ Analysis by a CPA member-company of recent transactions involving acquisitions of payphone companies operating more than 27,000 competitive payphones indicates that the purchase prices equated to more than $3,100 per pay station. Obviously, this valuation far exceeds the undepreciated hardware investment in such facilities and reflects the going concern value of these pay stations installed and operating in place.

18/ In recent years, Pacific Bell, for example, has increasingly resorted to the payment of signing bonuses, running in some cases into the millions of dollars, to secure multi-year location agreements for their pay stations. While Pacific Bell chooses to treat these investments as current operating expenses (contrary to the accounting practices uses by many firms), this does not change the reality that Pacific's separated payphone operations will be deriving income from these investments for years to come. They are part of the economic value of the payphone operation.

19/ It is interesting to note that Pacific Bell entitles the form it uses for payphone location contracts a "Space Use Agreement." Indeed, these agreements are analogous to grants of easements, and they may be understood to create substantial interests in real property. That, at least, seems to be Pacific Bell's intent in choosing a name for its standard agreement. If these contracts do create interests in real property, then it is even clearer that those interests should be taken into account in any valuation of the LECs' payphone operations.

virtually all sectors of the payphone services market -- is reasonably and realistically based in the past investment and cash expenditure practices of the LECs. This will, in turn, make it easier to apply a pricing standard that requires the LECs to price their payphone-based services above their relevant costs.

Second, but just as important, is the benefit that will accrue to the LECs' general body of ratepayers by the removal from the LECs' general revenue requirement of those costs caused by the LECs' payphone operations. For example, among the end results of properly valuing the LECs' payphone operations should be a slightly but appreciably lower subsidy requirement for the support of Universal Service.

The Commission should recall that the detariffing of CPE in 1981 involved the transfer of millions of units of obsolescent equipment to a new, deregulated entity that would immediately face an onslaught of vigorous competition from domestic and overseas competitors. Transfer of these assets at net book value did the ratepayers a favor. This is very clearly not the case for the LECs' current payphone operations, which have been operating successfully in a skewed but still competitive market for over a decade. The LECs are prepared for detariffing of their payphone operations. In this market, an assets transfer at net book value, with no allowance for going concern value, especially of location contracts, would give the LECs an unfair competitive edge.

F. Nonstructural Safeguards for BOC Provision of Payphone Service

At paragraph 58 of the NPRM, the Commission seeks comment on its tentative conclusion that all Computer III nonstructural safeguards must be applied pursuant to the Telecommunications Act. At paragraph 60, the Commission seeks comment on whether particular comparably efficient interconnection ("CEI") requirements should apply to Bell Operating Company ("BOC") provision of payphone service.

Rather than duplicate APCC's comments in response to these aspects of the NPRM, CPA simply directs the Commission's attention to one consideration that should not be ignored. The BOCs are pursuing a variety of paths toward entering new telecommunications markets and are erecting a variety of defenses for their present lines of business. Pacific Telesis Group has created a new entity, Pacific Bell Communications ("PB Comm"), which is presently seeking authorization from the CPUC to offer a combination of interLATA, intraLATA interexchange, and local exchange services. PB Comm apparently hopes to achieve a regulatory status akin to competitive local carriers and IXCs, rather than the dominant carrier status under which its sister company, Pacific Bell, still labors.

CPA does not seek to have the Commission interfere with PB Comm's plans, to the extent CPA is aware of them. However, CPA is concerned that the creation of a system of nonstructural safeguards that does not recognize the risks to fair competition posed from BOC affiliates, like PB Comm, may fail to achieve its goals. Accordingly, in formulating the rules intended to establish nonstructural safeguards, the Commission should take care to make sure that they protect against subsidization and discrimination in favor of the BOCs' payphone operations not only by the BOC itself, but also by any BOC affiliate (such as PB Comm) [20/]

20/ For example, the Commission's nonstructural safeguards should include protections against PB Comm, as well as Pacific Bell, offering its payphone operating division volume discounts on toll services or commissions or compensation for the delivery of high volumes of non-coin calls on terms that are, due to Pacific's still dominant payphone market share, available only to Pacific itself.

G. Ability of LECs to Negotiate with Location Owners over Presubscription

At paragraph 75 of the NPRM, the Commission tentatively concludes that all payphone providers, including LECs, should be given the right to negotiate with location providers concerning the selection of an intraLATA carrier to serve the payphone.

One alternative that should be given serious consideration is to limit the portion of interLATA traffic that a Bell Company can delivery to any particular carrier. For example, the Commission's rules could provide that no more than 25% of a Bell Company's total minutes of interLATA "0" or "0+" traffic may be presubscribed to any one carrier.[21/] This would help ensure that a Bell company could not use its dominant share of the installed payphone base as a "bottleneck" to exact exorbitant commission levels from interLATA carriers -- thereby securing additional resources with which to engage in predatory activity in the payphone market. Such a limit would allow independent providers a reasonable opportunity to secure comparable commission levels by aggregating traffic from many providers. In addition, a 25% limit on the total share of presubscribed 0+ traffic would help prevent Bell companies from effectively acquiring a stake in the success of a particular interLATA carrier and using that carrier as a proxy for currently prohibited interLATA activity.

Another measure that should be considered as a means to a similar result would be a limit on the number of payphones or calls that must be aggregated to receive an interLATA IXC's highest available 0+ commission level. For example, the Commission could specify that an IXC's highest commission level must be available to

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21/ See also the related concern about the direction of traffic to a BOC affiliate, addressed at Note 20, supra.

any company delivering traffic from at least 20,000 payphones, or must be available to any company delivering at least 2,000,000 minutes of 0+ traffic per month. As with the percentage limit discussed above, this type of limit would help ensure that a Bell company does not use its dominance of the payphone base to exact commission levels that are unavailable to independent providers even when traffic is aggregated from many IPPs.

H. Establishment of Public Interest Payphones

At paragraph 77 of the NPRM, the Commission seeks comments on whether it would be in the public interest to maintain payphones in the interest of public health, safety, and welfare, in locations where there would not otherwise be a payphone. In paragraphs 78 through 81, the Commission presents and seeks comments on a series of options for maintaining such public interest payphones, ranging from prescription of federal regulations to setting of national guidelines or defering entirely to the states in this matter.

At paragraph 80, the Commission also seeks help in defining a "public interest payphone," and asks for comment on a proposed definition, the key elements of which are that the payphone (1) operate at a financial loss; (2) fulfill some public policy objective; and (3) not be provided for a location provider with which the payphone provider has a contract. Finally, at paragraph 82, the Commission raises questions about the funding mechanism to support public interest payphones.

CPA strongly supports the recognition of public needs for the maintenance of payphones in certain locations where a payphone cannot be maintained economically without external support. Those needs, however, are unusual, limited in CPA's experience to fewer than one percent (1%) of pay stations